

Exhibit 6

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.,
Civil Action No. 01-12257-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II
In Support of United States' Common Memorandum of Law in Support of Cross-Motions for
Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary
Judgment

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

VOLUME II

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
PRICE LITIGATION : 01-CV-12257-PBS
:
THIS DOCUMENT RELATES TO :
U.S. ex rel. Ven-A-Care of :
the Florida Keys, Inc. v. :
Abbott Laboratories, Inc. :
No. 06-CV-11337-PBS :

- - -

Continuation of the videotaped
deposition of ROBERT VITO was taken, pursuant
to notice, at MORGAN LEWIS & BOCKIUS, LLP,
1701 Market Street, Philadelphia,
Pennsylvania, on Wednesday, June 20, 2007,
beginning at 8:43 a.m., before M. Kathleen
Muino, Professional Shorthand Reporter, Notary
Public; Michael Hunterton, Certified Legal
Video Specialist, there being present:

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1 MR. NEAL: Objection as to form.

2 THE WITNESS: If -- if we could get that
3 regulation, whatever that regulation states, that
4 -- that's what it is. If it says that they're
5 supposed to pay estimated acquisition cost or the
6 national, then that is what the policy says.

7 BY MR. TORBORG:

8 Q. And did you understand the term
9 "estimated acquisition cost" to be limited just to
10 the ingredient cost?

11 MR. NEAL: Objection as to form.

12 THE WITNESS: Our -- our work focused on
13 ingredient cost, and all the work that we have done
14 has focused on that except for more recently, when
15 our other offices had looked at the services that
16 were provided to Medicare beneficiaries who were
17 receiving the inhalation products.

18 BY MR. TORBORG:

19 Q. Whose decision is it to determine what
20 the appropriate amount to reimburse is under the
21 regulations?

22 MR. NEAL: Objection as to form.

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1 THE WITNESS: I -- I believe in this case
2 CMS was setting the price. Maybe HCFA then.

3 BY MR. TORBORG:

4 Q. If I could ask you to go back to Exhibit
5 Abbott 030, which is the suppliers' acquisition
6 costs' report?

7 A. Uh-huh.

8 Q. Page 10, you have a recommendation -- a
9 number of recommendations. One of them is
10 acquisition cost. Do you see that? Toward the --

11 A. Yes.

12 Q. -- bottom of the page. The report
13 states: Medicare could base the payment of drugs
14 on the EAC. The DMERCs currently have this option.
15 However, HCFA has been unsuccessful in gathering
16 the necessary data to fully implement it. Once the
17 problem of gathering the necessary data is
18 overcome, the use of the EAC would result in lower
19 allowed amounts. A variation of this option is to
20 use actual rather than estimated acquisition costs.

21 Mr. Vito, what do you recall, if anything,
22 about HCFA's apparently unsuccessful efforts to

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1 gather information to base the payment of drugs on
2 the EAC?

3 A. What I recollect -- recollect is that
4 there was an effort by CMS to get the pricing
5 information, I believe it was from physicians, for
6 certain drugs, cancer drugs, and I believe that
7 they had prepared surveys, I don't know if they had
8 sent the surveys out, but I know they had -- they
9 had prepared surveys and were moving forward in
10 that, and I believe they were petitioned by company
11 -- by -- by an organization that said that they
12 didn't -- that -- that they were petitioned under
13 the Paperwork Reduction Act because they did not
14 get their surveys approved by OMB and, therefore,
15 they were not able to do that.

16 MR. TORBORG: Mark this as our next
17 exhibit.

18 - - -

19 (Whereupon, Exhibit Abbott 239 was marked
20 for Identification.)

21 - - -

22 BY MR. TORBORG:

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1 Q. Mr. Vito, I've handed you, as Exhibit
2 Abbott 239, a document that bears the Bates Nos.
3 HHD062-0642. It appears to be a newspaper article
4 of -- of some kind?

5 A. Yes.

6 Q. And there's some handwritten annotations
7 on the side that, at least to me, indicate it's
8 from the Washington Post, January 2nd, '97, and
9 then it says, To: Rob Vito, and then there's
10 something else that I'll get into.

11 Mr. Vito, do you recall this article?

12 A. I -- I -- I know -- I don't specifically
13 recall this article, but I know that it was sent to
14 me.

15 Q. Whose handwriting is that on the left?

16 A. Stuart Wright.

17 Q. The article starts out by -- by stating:
18 For two years, the General Accounting Office and
19 inspector general of the Department of Health and
20 Human Services has bombarded Congress and Medicare
21 programs with a simple, money-saving message: The
22 prices Medicare pays doctors and drug suppliers for